MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4824 OF 2006

DEVARAJ KISAN HAVALDAR .. PETITIONER

Vs.

STATE OF MAHARASHTRA & ORS. RESPONDENT

Mr. R. S. Apte, i/b C. K. Bhangoje and V. P. Madane for petitioner

Mr. R. D. Rane, Addl. G.P. for R-1 to 3.

Mr. Ashok Shetty with Ms. Rini Joshi for R-4

CORAM: SMT. RANJANA DESAI &
SMT. R. S. DALVI,JJ.

DATE: NOVEMBER 29, 2007.

P.C.

. The petitioner is working in the Union Bank of India, Bhiwandi Branch. The petitioner is challenging in this petition communication dated 13/1/06 issued by the 2nd respondent on the basis of complaint dated 6/3/06 made by the 3rd respondent.

2. It appears that the petitioner was initially granted caste certificate by the Executive Magistrate, Shrivardhan, District Raigad to the

effect that he belongs to Mahadeo Koli, Scheduled Tribe. The petitioner was employed by the Union Bank of India on the basis of the said caste certificate. We are informed that the petitioner was appointed to the post of Cashier-cum-Clerk but as of today he is holding the post of Manager.

3. It is the case of the petitioner that respondent 3 has made a complaint against the petitioner that the caste certificate obtained by the petitioner is false. On the basis of that complaint the impugned communication is issued by the 2nd respondent asking the Union Bank of India to furnish original caste certificate and other documents in connection with the petitioner.

4. It is submitted by Mr. Apte, learned counsel for the petitioner that this complaint is totally malafide. It is submitted after 21 years and this delay itself indicates that it is a totally frivolous complaint. He submitted that, therefore, it was wrong on the part of the 2nd respondent to take cognizance of this complaint and call for documents from the Union Bank of India.

5. An affidavit has been filed on behalf of the

2nd respondent by one Sitaram Tatoba Bhalekar. Reference is made in the said affidavit to Section 7(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate Act, 2000 (Mah. Act No. XXIII of 2001) under which power is vested in the Scrutiny Committee to even initiate suo motu action.

6. We have heard Mr. Rane, learned Additional Government Pleader. Relying on Section 7 (1) of the said Act he submitted that any interference by this court would result in scuttling the action initiated by the 2nd respondent. He submitted that in case the petitioner really belongs to Mahadeo Koli Scheduled Tribe his stand will be ultimately vindicated, if he participates in the enquiry. We find substance in the submission of Mr. Rane.

7. It may be that the complaint is malafide but it is not possible for us at this stage to say so. The aspect of delay will have to be considered by the Caste Scrutiny Committee in its proper perspective having regard to the relevant judgments

of the Supreme Court on the point. In the facts of this case, in our opinion, if the Scrutiny Committee initiates action against the petitioner, till such time as it disposes of the proceedings and if it's decision is against the petitioner for a period of four weeks after its communication to the petitioner, the petitioner should not be removed from service. Hence the following order:

. "In case the Scrutiny Committee initiates any action on the basis of the complaint lodged by the 3rd respondent, it shall decide the complaint after giving sufficient opportunity to the petitioner and the respondents. Till such time as the complaint is finally adjudicated upon and if the decision of the Scrutiny Committee is against the petitioner, for a period of four weeks from the date of communication of the said decision to the petitioner, the Union Bank of India i.e. respondent 4 shall not remove the petitioner from service.

. We make it clear that we have not expressed any opinion on the merits of the case and the Scrutiny Committee shall decide the caste claim of the petitioner independently and in accordance with law.

. We make it clear that all contentions of the parties are kept open. We expect the petitioner to cooperate with the enquiry, if it is held.

. Petition is disposed of.

JUDGE

JUDGE